IN THE HIGH COURT OF JUDIATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.2189 OF 2006

Arvind J. Sawant, .. Applicant.
Vs
State of Maharashtra, .. Respondent.

Shri Shirish Gupte, senior counsel, with Mr P.P.Hudlikar i/b J.J. Saxena, for the applicant.
Mr D.S.Mhaispurkar, APP, for the respondent-State.

CORAM : D.B.BHOSALE, J.

DATED : 13th July, 2006

P.C.:

1. Heard Mr Gupte, learned senior counsel, for the applicant and Mr Mhaispurkar, learned A.P.P, for the respondent-State.

2. This is an application for bail by the applicant, who has been arrested as suspect after the directions given by the learned Sessions Judge for further investigation under section 173(8) of the Code of Criminal Procedure, while disposing of Sessions Case No.271 of 2002 vide the judgment and order dated 14.3.2006. The applicant was a prosecution witness no.6 in the said case. The deceased Chanda Sawant, who was allegedly murdered on 6.12.2001, was his wife. In the said trial, one of the accused, Sudhakar Pujari was acquitted and accused Ramesh

Pujari was convicted under sections 457 and 201 of IPC. Admittedly, the applicant was not at home when the alleged occurrence took place. It appears that the direction for further investigation was based on the confessional statement of accused Ramesh Pujari, who has been convicted under sections 457 and 201 of IPC.

3. The applicant came to be arrested on 26.4.2006 and since then he is in custody. Mr Gupte, learned senior counsel for the applicant, submitted that since the date of arrest of the accused, the prosecution has not collected any evidence whatsoever nature against him. His arrest as suspect is based only on the statement of the co-accused, which is legally inadmissible in evidence. Mr Mhaispurkar, learned APP, on instructions, submitted that till this date, except the statement of the co-accused, so far the investigating agency could not collect any other material showing involvement of the applicant in the alleged offence. It appears that before the Sessions Court a statement was made that the custody of the applicant is required for conducting brain mapping, Narco analysis and Lie detector tests at Bangalore. In view thereof, the learned Judge has rejected the application observing that it was not appropriate to grant him bail till the aforesaid tests were

conducted. On the last date of hearing I was informed that the tests were not conducted and the matter was adjourned. Today Mr Mhaispurkar, informed me that the tests have already been conducted. However, the reports of the tests are awaited. In reply affidavit the State has opposed the application on the ground that the witnesses, who were allegedly examined in the case, were not available due to efflux of time and unless their supplementary statements are recorded the chargesheet against the accused cannot be filed. The police have not explained satisfactorily as to why they could not locate the witnesses during last more than 2.1/2 months. Considering the overall facts and circumstances of the case and that the tests at Bangalore have already been conducted and considering that no evidence whatsoever is collected against the applicant so far connecting him with the alleged offence, I am inclined to enlarge him on bail. Mr Mhaispurkar, fairly, stated that the accused may be directed to report the police station and co-operate with the investigation. Hence, I pass the following order.

4. The applicant shall be released on bail in the sum of Rs.25,000/- with two sureties of the like amount subject to condition that he shall report Sion Police Station every alternate day between 10.00 am

and 1.00 pm for a period of one month and thereafter as and when required. The applicant shall not leave the city of Mumbai without permission of the investigating agency as long as the investigation is in progress. It is open for the investigating agency to apply for cancellation of bail if they find any material/evidence against the applicant during the investigation.

(D.B.BHOSALE,J.)